

Camdelphia Enterprises, Inc. and Teamsters Local 676, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America. Case 4-CA-12729

26 August 1983

SUPPLEMENTAL DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS
JENKINS AND ZIMMERMAN

On 21 September 1982 the National Labor Relations Board issued a Decision and Order¹ in the above-entitled proceeding in which it granted the General Counsel's Motion for Summary Judgment and found that Respondent violated Section 8(a)(5), (3), and (1) of the National Labor Relations Act, as amended. Specifically, the Board found that Teamsters Local 676, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein the Teamsters, is the exclusive representative of Respondent's employees and that Respondent violated Section 8(a)(5) and (1) of the Act by failing to bargain with the Teamsters concerning the effects on bargaining unit employees of its decision to cease that portion of its business involving the sale of lumber, and by withdrawing recognition from the Teamsters as the "exclusive representative of Respondent's employees engaged in the fabrication and sale of windows and related products." The Board also found that Respondent violated Section 8(a)(3) and (1) of the Act by discharging employees Andrew Flowers and John Flowers because of their union membership. The Board ordered Respondent, *inter alia*, to recognize the Teamsters as the exclusive representative of bargaining unit employees.

On 30 November 1982 Respondent filed a motion to reopen proceedings in which it contended that it had good cause for failing to file an answer to the complaint, that it had meritorious defenses, and that the Board's Decision and Order was factually inaccurate. With regard to the last contention, Respondent asserted that, contrary to the complaint and the Board's Decision and Order, the Teamsters does not represent all of Respondent's employees, but only its truckdrivers, yardmen, and working leader.² According to Respondent, Carpenters District Council of South Jersey, United Brotherhood of Carpenters District Council of South Jersey, United Brotherhood of Carpenters and Joiners of America, AFL-CIO, herein the Car-

penters, represents those employees engaged in the fabrication and sale of windows and related products. Respondent contended that compliance with that part of the Board's Decision and Order requiring it to recognize the Teamsters as the collective-bargaining representative of its fabrication employees would result in the breach of its contract with the Carpenters. Respondent requested that the summary judgment be vacated.³

On 2 March 1983 the Board denied Respondent's motion to reopen proceedings. However, in view of the uncontroverted allegations of factual inaccuracies in the Board's Decision and Order, the Board issued a Notice To Show Cause why the Decision and Order should not be amended, and why that part of the Decision and Order which found that Respondent unlawfully withdrew recognition from the Teamsters as collective-bargaining representative of the window-fabrication employees should not be vacated. In its response to the notice, the General Counsel asserts that the Teamsters represents a unit of truckdrivers, yardmen, and working leader employed in Respondent's lumberyard,⁴ that the unit employees performed some work in the window-fabrication part of Respondent's business before and after the cessation of Respondent's lumber-selling operation, and that the Board's Decision and Order need only be amended to find that Respondent failed to recognize the Teamsters as the bargaining representative of unit employees who performed and continued to perform work in the window-fabrication part of Respondent's business, and that Respondent refused to abide by the Teamsters contract with respect to such work.

We hereby clarify our original Decision and Order by finding that the unit of employees represented by the Teamsters consists of Respondent's truckdrivers, yardmen, and working leader. Accordingly, all references to "bargaining unit employees" in our original Decision and Order shall be read as pertaining to employees in the truckdriver, yardman, and working leader classifications. We also find that the Carpenters represents Respondent's employees engaged in the fabrication and sale of windows and related products. Furthermore, in view of the separately represented bargaining units, the cessation of Respondent's lumber-selling operation,⁵ the resultant absence of lumber-

¹ 263 NLRB No. 178. Chairman Dotson did not participate in the original Decision and Order.

² Respondent submitted a copy of its collective-bargaining agreement with the Teamsters covering the job classifications listed above.

³ The General Counsel and the Teamsters filed briefs in opposition to Respondent's motion to reopen proceedings. Respondent subsequently filed a reply brief. Thereafter, the General Counsel filed a response to Respondent's reply brief, and Respondent filed a letter in response to the General Counsel's response.

⁴ The General Counsel concedes that the Carpenters represents certain employees of Respondent in the window part of its business.

⁵ There is no allegation that Respondent terminated its lumber-selling operation to avoid its duty to recognize the Teamsters and abide by the collective-bargaining agreement.

yard work of the Teamsters-represented employees, and the inapplicability of the job classifications listed in the Teamsters-Respondent contract to Respondent's remaining business, we find that Respondent was not required to recognize the Teamsters after the termination of its lumber-selling operation on or about 16 February 1982. Accordingly, we vacate that part of our original Decision and Order which found that Respondent violated Section 8(a)(5) and (1) of the Act by withdrawing recognition from the Teamsters with respect to employees engaged in the fabrication and sale of windows and related products. We shall amend our initial Conclusions of Law and Order accordingly.

AMENDED CONCLUSIONS OF LAW

1. Camdelphia Enterprises, Inc., is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. Teamsters Local 676, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, is a labor organization within the meaning of Section 2(5) of the Act.
3. The above-named labor organization has been and now is the exclusive representative of employees in an appropriate unit for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.
4. By failing to afford the Union an opportunity to bargain about the effects on bargaining unit employees of the termination of its lumber-selling operation on or about 16 February 1982 Respondent has violated Section 8(a)(5) and (1) of the Act.
5. By discharging employees Andrew Flowers and John Flowers on or about 16 February 1982 because of their union membership and representation, Respondent has violated Section 8(a)(3) and (1) of the Act.
6. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Camdelphia Enterprises, Inc., Camden, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Board's original Decision and Order of 21 September 1982 (reported at 263 NLRB No. 178), as amended herein:

1. Delete paragraphs 1(b) and 2(c) and reletter the subsequent paragraphs accordingly.
2. Substitute the attached notice for the notice ordered to be posted in the Board's original Decision and Order.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

WE WILL NOT fail and refuse to bargain with Teamsters Local 676, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with respect to the effects on bargaining unit employees of the decision to cease that portion of our business involving the sale of lumber.

WE WILL NOT discharge or otherwise discriminate against employees because of their membership in and representation by Teamsters Local 676, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them under Section 7 of the Act.

WE WILL make employees whole by paying those employees who suffered losses by reason of our termination of our lumber-selling operation normal wages for a period specified by the National Labor Relations Board, plus interest.

WE WILL, upon request, bargain collectively with Teamsters Local 676, affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, with respect to the effects on bargaining unit employees of our decision to cease that portion of our business involving the sale of lumber, and WE WILL reduce to writing any agreement reached as a result of such bargaining.

WE WILL offer Andrew Flowers and John Flowers immediate and full reinstatement, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make them whole, with interest, for any loss of earnings they may have suffered by reason of their unlawful discharge.

WE WILL expunge from our files any references to the discharge of Andrew Flowers and John Flowers on or about 16 February 1982, and WE WILL notify them in writing that this has been done and that evidence of these un-

lawful discharges will not be used as a basis for future personnel actions against them.

CAMDELPHIA ENTERPRISES, INC.